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IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1935.

No. 664.

J. W. Tipton,

Petitioner,

vs.

The Atchison, Topeka and Santa Fe Railway Company, a corporation,

Respondent.

BRIEF FOR RESPONDENT.

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Respondent.

BRIEF FOR RESPONDENT.

The judgment should be affirmed for the following reasons:

1. The Federal Safety Appliance Act does not give petitioner any independent right to sue his employer.

2. Petitioner's rights are defined by the California Workmen's Compensation, Insurance and Safety Act, within the jurisdiction of the Industrial Accident Commission of the state of California, by appropriate proceedings therein, and not by any action at law in the courts.

NOTE: Petitioner does not contend that the Federal Employers' Liability Act is at all involved in this litigation.

ARGUMENT.

I.

The Federal Safety Appliance Act Does Not Give Petitioner Any Right to Sue His Employer.

This court, in the cases of *Moore v. Chesapeake & Ohio R. Co.,* 291 U. S. 205, 78 L. Ed. 755, and *Minneapolis, St. P. & S. S. M. R. R. Co. v. Popplar,* 237 U. S. 369, 59 L. Ed. 1000, and finally in the case of *Gilvary v. Cuyahoga Valley R. Co.,* 292 U. S. 57, 78 L. Ed. 723, held that where a railroad employee was not engaged in interstate commerce, and sustained injury by reason of an alleged violation of the Federal Safety Appliance Act, the right of such employee to recover or be compensated for his injuries is to be determined by the law of the state wherein the accident happened. This court said:

> "The Safety Appliance Acts having prescribed the duty in this fashion, the right to recover damages sustained by the injured employee through the breach of duty sprang from the principle of the common law (Texas & P. R. Co. v. Rigsby, 241 U. S. 39, 40, 60 L. Ed. 877, 878, 36 Supreme Court 482) and was left to be enforced accordingly, or, in the case of the death of the injured employee, *according to the applicable statute.* (St. Louis, I. M. & S. R. Co. v. Taylor, 210 U. S. 285, 52 L. Ed. 1064, 28 Supreme Ct. 616; Minneapolis, St P. & S. Ste. M. R. Co. v. Popplar, 237 U. S. 369, 59 L. Ed. 1000, 35 S. Ct. 609.) When the Federal Employers' Liability Act was enacted, it drew to itself the right of action for injuries or death of the employees within its purview who were engaged in interstate commerce, including those cases in which injuries were due to a violation of the Safety Appliance Acts. Such an action must

be brought as prescribed in the Federal Employers' Liability Act, and if brought in the state court, it cannot be removed to the federal court, although violation of the Safety Appliance Acts is involved. See St. Joseph & G. I. R. Co. v. Moore, 243 U. S. 311, 61 L. Ed. 741, 37 S. Ct. 278. *With respect to injuries sustained in intrastate commerce,* nothing in the Safety Appliance Acts precluded the state from incorporating in its legislation applicable to local transportation the paramount duty which the Safety Appliance Acts imposed as to the equipment of cars used on interstate railroads. As this court said in Minneapolis, St. P. & S. Ste. M. R. Co. v. Popplar, *supra*, as to an action for injuries sustained in intrastate commerce: 'The action fell within the familiar category of cases involving the duty of master to his servant. This duty is defined by the common law, except as it may be modified by legislation. The federal statute, in the present case, touched the duty of the master at a single point and, save as provided in the statute, *the right of the plaintiff to recover was left to be determined by the law of the state.*'

"We are of the opinion that the second paragraph of the complaint set forth a cause of action under the Kentucky statute and, *as to this cause of action, the suit is not to be regarded as one arising under the laws of the United States.*"

Moore v. C. & O. R. Co., 291 U. S. 205, 78 L. Ed. 755.

"These acts (Safety Appliance Acts) do not create or prescribe the measure or govern the enforcing of the liability arising from a breach. *They do not extend to the field occupied by the state compensation act.*"

Gilvary v. Cuyahoga Valley R. Co., 292 U. S. 57, 78 L. Ed. 723.

If, as petitioner claims, the cases of *Texas & Pacific R. Co. v. Rigsby, supra; Ward v. Erie R. Co.*, 230 N. Y. 230; *McMahon v. Montour R. Co.*, 270 U. S. 628; *Ross v. Schooley*, 257 Fed. 290, and others cited in his brief, hold to the contrary, they must be disregarded in view of the later decisions of this court.

From the foregoing it will be seen, therefore, that the District Court was correct in sustaining respondent's demurrer to the complaint upon the grounds that no right of action could be predicated solely upon an alleged violation of the Federal Safety Appliance Act.

II.

Petitioner's Rights Are Defined by the California Workmen's Compensation, Insurance and Safety Act Within the Jurisdiction of the Industrial Accident Commission of the State of California, by Appropriate Proceedings Therein, and Not by Any Action at Law in the Courts.

The California Workmen's Compensation, Insurance and Safety Act 1917, California Statutes 1917, page 831, as amended (Deering's General Laws, 1931 Edition, at 4749), enacted pursuant to article XX, section 21 of the California Constitution, provides, in part, as follows:

> "Sec. 6. *Employer's Liability.* (a) Liability for the compensation provided by this act in lieu of any other liability whatsoever to any person shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of the employment.
> * * *

"Sec. 7. *Employer Defined.* The term 'employer' as used in section 6, etc., shall be construed to mean * * * every person, firm, voluntary association and private corporation, including any public service corporation, who has any person in service under any appointment or contract of hire, express or implied, oral or written. * * *"

The act provides for the establishment of an Industrial Accident Commission for the making of claims, holding of hearings, taking of evidence, and making of awards and enforcement thereof. Section 69 of the act provides:

"(a) Whenever this act or any part or section thereof is interpreted by a court, it shall be liberally construed by such court with the purpose of extending the benefits of the act for the protection of persons injured in the course of their employment.

* * * * * * * * * *

"(c) *Employers Engaged in Interstate Commerce.* This act shall not be construed to apply to employers or employments which according to law are so engaged in *interstate commerce* as not to be subject to the legislative power of the state or to employees injured while they are so engaged except in so far as this act may be permitted to apply under the provisions of the Constitution of the United States or the acts of Congress."

Petitioner, without citing any cases in support thereof, claims, without quoting them, that sections 1714, 3281 and 3333, of the California Civil Code, and section 4468 of the California Political Code, give him a right to sue his master for negligence in California. These code sections are merely declaratory of the general rule of damages applicable to tort actions and were enacted in

the year 1872. At the same time the California legislature enacted sections 1969, 1970, and 1971 of the Civil Code specifically dealing with the indemnification of an employee by his employer. These last-referred-to statutes were the law in California until legislation was passed pursuant to the amendment of article XX, section 21, of the California Constitution, 1911 (*supra*), authorizing the legislature to create a system of workmen's compensation. These sections and the sections cited by counsel were repealed by article 71, of the California Workmen's Compensation Act of 1917, Statutes 1917, page 8031, which, after repealing specifically certain numbered sections of the Statutes of 1913, contained the following language,

> "And all other acts and parts of acts inconsistent herewith are hereby repealed;".

In view of the foregoing, and the decisions of the California Supreme Court hereinafter considered, any claim that the present action can be maintained upon the authority of the code sections cited by petitioner is so absurd as not to merit further extended argument in reply thereto.

The Supreme Court of California has said:

> "This step (amendment to the California Constitution of 1911) was a distinct innovation in this state respecting the liability and remedies as between employer and employee. It enabled the legislature to deprive the trial courts of this state of jurisdiction over such disputes and to deny to the employee the right to a jury trial. (*Dominguez v. Pendola*, 46 Cal.

App. 220, 128 Pac. 1025.) It also took from the workman many other common-law remedies. As compensation for such deprivations it enabled the Legislature to afford him compensation regardless of his own negligence."

Bartlett Hayward Co. v. Industrial Accident Commission, 203 Cal. 522, 528.

"The obvious intent of the act was to substitute its procedure for the former method of settling disputes arising between those occupying the strict relationship of master and servant, or employer and employee, by means of actions for damages, either their pleas of negligent acts or omissions in the way of providing suitable places to work, or proper appliances and the like; and with their defenses of assumed risks or of the negligence of fellow-servants, or of contributory negligence; and with the uncertainties or inequities incident to jury trials."

Cooper v. Industrial Accident Commission, 177 Cal. 685.

"The enactment substitutes a new system of rights and obligations for the common-law rules governing the liability of employers for injuries to their workmen. The change thus made is radical, not to say revolutionary. In place of the old action, *in which the employer was liable only if he or someone representing him,* had been guilty of negligence or misconduct, the new law imposes upon the employer a liability for any accidental injuries to his employees arising out of the employment—a liability not conditioned upon any negligence of the employer, or any want of negligence on the part of the employee."

Western Indemnity Co. v. Pillsbury, 170 Cal. 686, 692.

There is no contention made by petitioner that any of his alleged rights are predicated upon the act of Congress, known as the Federal Employers' Liability Act, *supra.* This Honorable Court in the case of *Industrial Accident Commission v. Davis,* 259 U. S. 182, 66 L. Ed. 888, 42 Sup. Ct. Rep. 489, held that if the Federal Employers' Liability Act does not apply, the California Workmen's Compensation Act does. As was said in the case of *Southern Pacific Co. v. Industrial Accident Commission,* 251 U. S. 259, 64 L. Ed. 258, 40 Sup. Ct. Rep. 130:

> "If the work was part of interstate commerce, the Workmen's Compensation Act of the state is inapplicable, and the judgment must be reversed; otherwise it must be affirmed."

In *Cooper v. Industrial Acc. Com.,* 177 Cal. 685, 687 (171 Pac. 684), it was held:

> "The California Workmen's Compensation Act provides the only means by which an injured employee can recover compensation from his employer for injuries received in the course of and arising out of his employment, and it abrogates the common-law liability of the master for such injuries in the cases to which it is applicable. (Citing *Netherlands American Steam Nav. Co. v. Gallagher,* 282 Fed. 171, 183.)
>
> "The obvious intent of the act was to substitute its procedure for the former method of settling disputes arising between those occupying the strict relationship of master and servant, or employer and employee, by means of actions for damages."

"It substitutes a new system of rights and obligations for the common-law rules governing the liability of employers for injuries to their employees."

Western Indemnity Co. v. Pillsbury, 170 Cal. 686 692 (151 Pac. 398).

"When the specified conditions exist, the remedy provided by the act is exclusive of all other statutory or common-law remedies."

DeCarli v. Associated Oil Co., 57 Cal. App. 310 (207 Pac. 282).

There is an unbroken line of decisions of the California District Courts of Appeal in conformity with the foregoing cases. Some of these decisions are:

Dominguez v. Pendola, 46 Cal. App. 220, 128 Pac. 1025;

McLain v. Llewellyn Iron Works, 56 Cal. App. 60, 204 Pac. 869;

De Carli v. Associated Oil Co., 57 Cal. App. 310, 207 Pac. 282;

Treat v. Los Angeles Gas & Elec. Corp., 60 Cal. App. 466, 213 Pac. 263;

Treat v. Los Angeles Gas & Elec. Corp., 82 Cal. App. 610, 256 Pac. 447;

Pecor v. Norton-Lilly Co., 111 Cal. App. 241, 295 Pac. 582;

Butler v. Wyman, 128 Cal. App. 736, 18 Pac. (2d) 354;

Burton v. Union Oil Co., 129 Cal. App. 438, 19 Pac. (2d) 9;

Sarber v. Aetna Life Ins. Co., 23 Fed. (2d) 434.

This court, in the case of *Cudahy Packing Co. v. Parramore,* 263 U. S. 418, 68 L. Ed. 366, considering a decision of the Supreme Court of the state of Utah affirming the award of the Utah Industrial Accident Commission under the Workmen's Compensation Act of that state, said:

> "That the statute is constitutional upon its face is established by previous decisions of this court (New York C. R. Co. v. White, 243 U. S. 188, 61 L. Ed. 667, L. R. A. 1917D, 1, 37 Sup. Ct. Rep. 247, Ann. Cas. 1917D, 629, 13 N. C. C. A. 943; Hawkins v. Bleakly, 243 U. S. 210, 61 L. Ed. 678, 37 Sup. Ct. Rep. 255, Ann. Cas. 1917D, 637, 13 N. C. C. A. 959; Mountain Timber Co. v. Washington, 243 U. S. 219, 61 L. Ed. 685, 37 Sup. Ct. Rep. 260, Ann. Cas. 1917D, 642, 13 N. C. C. A. 927; Arizona Employers' Liability Cases (Arizona Copper Co. v. Hammer), 250 U. S. 400, 63 L. Ed. 1058, 6 A. L. R. 1537, 39 Sup. Ct. Rep. 553; Madera Sugar Pine Co. v. Industrial Acc. Commission, 262 U. S. 499, 67 L. Ed. 1091, 43 Sup. Ct. Rep. 604).
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> * * * * * * * *
>
> "It is settled by the decisions of this court and by an overwhelming array of state decisions that such statutes (State Workmen's Compensation Acts) are not open to constitutional objection because they abrogate common-law defenses or impose liability without fault. * * * The modern development and growth of industry, with the consequent changes in the relations of employer and employee, have been so profound in character and degree as to take away in large measure, the applicability of the doctrines upon which rest the common-law liability of the master for personal injuries to a servant, leaving, of necessity, a field of debatable ground where a good deal must be conceded in favor of forms of legislation

calculated to establish new bases of liability more in harmony with these changed conditions. Workmen's compensation legislation rests upon the idea of status, not upon that of implied contract; that is, upon the conception that the injured workman is entitled to compensation for an injury sustained in the service of an industry to whose operations he contributes his work as the owner contributes his capital—the one for the sake of the wages and the other for the sake of the profits. The liability is based, not upon any act or omission of the employer, but upon the existence of the relationship which the employee bears to the employment because of and in the course of which he has been injured. And this is not to impose liability upon one person for an injury sustained by another with which the former has no connection; but it is to say, that it is enough if there be a causal connection between the injury and the business in which he employs the latter—a connection substantially contributory, though it need not be the sole or proximate cause. Legislation which imposes liability for an injury thus related to the employment, among other justifying circumstances, has a tendency to promote a more equitable distribution of the conomic burdens in cases of personal injury or death resulting from accidents in the course of industrial employment, and is a matter of sufficient public concern (Mountain Timber Co. v. Washington, 243 U. S. p. 239, 61 L. Ed. 697, 37 Sup. Ct. Rep. 260, Ann. Cas. 1917D, 642, 13 N. C. C. A. 927), to escape condemnation as arbitrary, capricious, or clearly unreasonable."

The language of the California act is plain and unequivocal. The California Supreme Court and this court have, time and time again, said that it is the only remedy

under the California state law available to an employee seeking to recover from his master for injuries arising out of his employment while he was within the scope of his employment. This court has always held that, in the construction of a state statute, it is bound only by the decisions of the highest court of the state. *Graham v. White Phillips Co.*, decided by this court November 11, 1935, ... U. S. ....., Advance Sheets Vol. 80, Lawyers' Edition, page 62, at 64, contains the following pertinent language:

> "Under Burns Mortgage Co. v. Fried, 292 U. S. 487, 78 L. Ed. 1380, 54 Supreme Court 813, 92 A. L. R. 1193, a definite construction of the negotiable instrument law by the state Supreme Court, binding on the local tribunals, must be accepted by the federal courts."

This court then referred to a decision by the appellate department of the Illinois courts and, after quoting therefrom, said:

> "The state Supreme Court denied an application for certiorari without more. The argument is that this amounted to approval of the construction placed upon the statute by the appellate court. The point is not well taken."

This court then went on to say that the Illinois Supreme Court had declared "that denial of certiorari does not import approval of the reasons assigned by the lower court," citing *People ex rel. Hoyne v. Grant*, 283 Ill. 391, 397, 119 N. E. 344.

In the case of *Quong Ham Wah Co. v. Industrial Accident Commission of California,* 255 U. S. 445, 65 L. Ed. 723, this court said:

> "But it is elementary that this court is without authority to review and revise the construction affixed to a state statute as to a state matter by the court of last resort of the state. (Commercial Bank v. Buckingham, 5 How. 317, 342, 12 L. Ed. 169, 181; Johnson v. New York L. Ins. Co., 187 U. S. 491, 496, 47 L. Ed. 273, 275, 23 Sup. Ct. Rep. 194; Ross v. Oregon, 227 U. S. 150, 162, 57 L. Ed. 458, 463, 33 Sup. Ct. Rep. 220; Ann. Cas. 1914C, 224; Ireland v. Woods, 246 U. S. 323, 330, 62 L. Ed. 745, 750, 38 Sup. Ct. Rep. 319; Stadelman v. Miner, 246 U. S. 544, 62 L. Ed. 875, 38 Sup. Ct. Rep. 359; Erie R. Co. v. Hamilton, 248 U. S. 369, 371, 372, 63 L. Ed. 307, 308, 39 Sup. Ct. Rep. 95.)"

In the case of *Burns Mortgage Co. v. Fried,* 292 U. S. 487, 78 L. Ed. 1380, this court said:

> "Section 34 of the Judiciary Act of 1789 directs that the laws of the several states, except where the Constitution, treaties or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States, in cases where they apply. The applicable state statute furnishes the rule of decision for a federal court sitting in the state or outside its borders. And in that court the law must be given the meaning and effect attributed to it by *the highest court of the state,* as if the state court's decision were literally incorporated into the enactment, whatever the federal tribunal's opinion as to the correctness *of the state court's views.* * * *
>
> * * * * * * *

"Until the Supreme Court of Florida holds otherwise, we are justified in construing the act in accordance with what we think its intent, especially as this construction accords with the views of the courts of other states."

However, petitioner claims that the cases of *Ballard v. Sacramento Northern,* and *Walton v. Southern Pacific Co.* hold to the contrary in supporting the position taken by his herein, and are binding upon this court. As we pointed out in our answer to the petition for writ of certiorari herein, the *Ballard* case was decided prior to the cases of *Moore v. C. & O. R. Co., supra,* and *Gilvary v. Cuyahoga Valley R. Co., supra,* and attempted to interpret the Federal Safety Appliance Act, rather than the California Workmen's Compensation Act. We also pointed out that in the *Walton* case the California District Court of Appeal, without citing any authority, merely relied upon the *Ballard* case in justification of the affirmance of the judgment. These two cases were decided by the California District Court of Appeal upon the erroneous assumption that the Federal Safety Appliance Act itself created a cause of action.

Petitioner herein cites the *Walton* and *Ballard* cases and claims that they are binding upon this court. As we have pointed out, this court is bound only by the decision of the Supreme Court of the state, not by any decision of a district court. Petitioner makes the erroneous claim that, by refusing a petition for hearing in the *Ballard* and *Walton* cases, the Supreme Court of California thereby affirmed the legal propositions contained therein. He cites some dicta to that effect, which dicta, however, is not controlling. The Supreme Court of

California, in the case of *People v. Davis,* 147 Cal. 346, once and for all announced the construction which should be placed upon its action in refusing to grant a hearing in a case after decision by a District Court of Appeal. The court said, in part:

> "It is proper to add that the denial in any case of an application for the transfer of a case decided by a District Court of Appeal is not to be taken as an expression of any opinion by this court, or as the equivalent thereof, in regard to any matter of law involved in the case and not stated in the opinion of that court, *nor, indeed, as an affirmative approval by this court of the propositions of law laid down in such opinion.* The course to be pursued by this court in the exercise of its power in any case is a matter in which the objects above stated are the controlling considerations, and it will not hold itself bound even where questions of law alone are involved, to order a transfer of the case, after a decision of the district court, except where it shall appear necessary in order to carry out the above-stated purposes of securing uniformity of decision and the settlement of important questions of law. *The significance of such refusal is no greater than this—that this court does not consider that the interests of justice, or the purposes for which the power was given, require its exercise in the particular case."*

Again, in the case of *Bohn v. Bohn,* 164 Cal. 532, at 537, the Supreme Court of California used the following pertinent language:

> "It is, of course, much to be regretted that opposite rulings should be made in two cases which present identical questions. *But an order by this court, refusing to transfer a cause after judgment in the Dis-*

trict Court of Appeal, does not adopt the opinion of the appellate court so as to give it, in this court, the authoritative effect which one of our own decisions would have. Being now convinced that the order appealed from should be affirmed, we must so declare, even though this view necessarily involves the conclusion that the earlier appeal should have been transferred to this court, and thereupon disposed of by a judgment differing from that rendered in the District Court of Appeal. Indeed, believing, as we do, that the order now under review was properly made, it would be our duty to affirm it, even if this court had itself, in another case, reversed an order similar in all respects."

"Under the authority of People v. Davis, 147 Cal. 346 (81 Pac. 718), and Bohn v. Bohn, 164 Cal. 532 (129 Pac. 981), we are not bound to accept the language as precedent, but should give expression to the reasons for our dissent therefrom."

People v. Rabe, 202 Cal. 409, 418.

"It is true that the law laid down in that case, notwithstanding the denial of a petition for hearing in this court, is not binding here. (People v. Davis, 147 Cal. 346 (81 Pac. 718.)"

Shelton v. City of Los Angeles, 206 Cal. 544, 550.

From the foregoing it will be seen that the Supreme Court of California has repeatedly held that there is no common-law right of action in California whereby an employee can sue his employer for damages on account of injuries sustained during the course of his employment, and that there is no statute in California governing the relations between master and servant with respect to injuries and death other than the California Workmen's

Compensation Act. (*Alaska Packers Assn. v. Industrial Accident Commission, supra.*) The decisions in the *Ballard* and *Walton* cases are erroneous and are not binding either upon the Supreme Court of California nor this court. Until and unless the people of the state of California amend their Constitution and the Legislature, by appropriate legislation, enacts new statutes, or the Supreme Court of California in an authoritative opinion recedes from the position which it has heretofore continuously taken, petitioner's complaint in the court below stated no cause of action under California state statutes.

Conclusion.

Upon the record in this case and from the foregoing, it conclusively appears that, since petitioner, at the time of the alleged accident, was engaged in intrastate commerce, his right to compensation therefor was and is governed exclusively by the provisions of the California Workmen's Compensation, Insurance and Safety Act of 1917; that said complaint did not state a cause of action against respondent herein under any federal statute or any state statute, and that the judgment of the court below is correct and therefore should be affirmed.

Respectfully submitted,

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